

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

	)	
Investigation by the Department of	)	
Telecommunications and Energy on its	)	
Own Motion, pursuant to G.L. c. 164	)	
§§ 1A(a), 1B(d), 94 and 220 C.M.R. 11.04	)	
into the Costs that Should Be Included	)	D.T.E. 03-88F
In Default Service Rates for Western	)	
Massachusetts Electric Company	)	
	)	

**JOINT RESPONSE OF CENTRICA NORTH AMERICA  
AND DOMINION RETAIL, INC.  
TO OPPOSITION OF WESTERN MASSACHUSETTS ELECTRIC COMPANY  
TO PETITIONS TO INTERVENE**

**I.     Procedural Background**

On November 17, 2003, consistent with its April 24, 2003 Order in *Procurement of Default Service*, D.T.E. 02-40-B, the Department of Telecommunications and Energy (“Department” or “DTE”) opened an investigation regarding the costs that should be included in Default Service rates (“November 17, 2003 Order”). In its November 17, 2003 Order, the Department set forth the types of costs which are to be included in each distribution company’s default service rates and directed each distribution company to submit to the Department a filing which (1) identifies its wholesale-related and direct retail-related default service costs; (2) allocates those costs to its default service customer classes on a per kilowatt-hour (“KWH”) basis; and (3) calculates adjustments to distribution base rates based on a per-KWH allocation to each rate class of the identified default service costs. D.T.E. 03-88, at 4-5.

On January 20, 2004, Western Massachusetts Electric Company (“WMECo”) submitted prefiled testimony and exhibits to the Department as required by the November 17, 2003 Order. The investigation of WMECo’s default service filing has been docketed at D.T.E. 03-88F.

On February 17, 2004, the Department issued a Notice with respect to WMECo’s filing in D.T.E. 03-88F and established separate deadlines for petitions to intervene and written comments. Both Centrica and Dominion filed petitions to intervene in this proceeding (hereinafter “Centrica Petition” and “Dominion Petition”).

At a March 11, 2004 procedural conference in this proceeding (and companion proceedings regarding other distribution companies’ default service costs filings), the Hearing Officer established March 19, 2004 as the deadline for distribution companies to submit written opposition to certain petitions to intervene, and March 24, 2004 as the deadline for responses to these oppositions.

On March 18, 2004, WMECo filed with the Department its Opposition to the petitions to intervene of Centrica, Dominion, Constellation NewEnergy, Inc., and Select Energy, Inc. (“WMECo Opposition”). Consistent with the procedural schedule established by the Hearing Officer, Centrica and Dominion herewith file a joint response to the WMECo Opposition.

**II. Both Centrica and Dominion Meet the Requirements for Intervention as Set Forth in G.L. c. 30A, § 10(4) and 220 CMR 1.03(1)(b).**

As required by G.L. c. 30A, §10(4) and 220 CMR 1.03(1)(b), both Centrica and Dominion have demonstrated that they “may be substantially and specifically affected” by these proceedings. Centrica has stated that it is a large retail supplier that is interested in participating in the Massachusetts retail electricity market, and, as such, would be affected by the allocation of costs between distribution rates and default service rates. Centrica Petition at 3.

Similarly, Dominion has stated that it presently serves customers in the Massachusetts electricity market and that it has an interest in “ensuring that Default Service rates are properly calculated...” Dominion Petition at 1.

Notably, in its Opposition WMECo never states that either Centrica or Dominion is not or will not be substantially and specifically affected by these proceedings. WMECo ignores this core issue and instead offers a panoply of tangential grounds for excluding Centrica and Dominion from this proceeding. Among other things, WMECo argues that the suppliers seeking intervenor status “do not bring any special expertise to the effort” of ensuring that WMECo has correctly allocated costs to default service rates (WMECo Opposition at 4); that Centrica and Dominion have less experience than other intervenors in adjudicatory proceedings (*id.* at 4-5); and that two other potential intervenors in this proceeding, Associated Industries of Massachusetts (“AIM”) and the Division of Energy Resources (“DOER”), can adequately represent the interests of Centrica and Dominion in this proceeding (*id.* at 5).

WMECo’s emphasis on these tangential issues cannot disguise a simple and inescapable fact – that the default service rate established by the Department in this case will constitute the “price to beat” for Centrica, Dominion and other suppliers. How this rate is set and whether it is set accurately is of substantial interest to Centrica and Dominion and will affect these companies’ operations in the Massachusetts electricity marketplace over coming months. Despite WMECo’s protests, the Department’s rules do not require a potential intervenor to demonstrate that it has attained some level of adjudicatory or ratemaking proficiency or that it has appeared in some threshold number of Department adjudicatory proceedings. (Of course, even if such extreme requirements were in place, both Centrica and Dominion have demonstrated their proficiency in matters of this kind in numerous jurisdictions.) Similarly, although AIM and DOER may share

certain policy viewpoints with Centrica and Dominion, neither of those entities will be required to compete with the “price to beat” established in this proceeding.

**III. The Department Should Not Use Its Discretion Relative to Petitions to Intervene to Exclude Centrica and Dominion from this Proceeding.**

While the Supreme Judicial Court (1) has concluded that agencies have broad discretion to grant or deny intervention (*Tofias v. Energy Facilities Siting Board*, 435 Mass. 340 (2001) (“*Tofias*”)), and (2) has upheld the decision of the Department to deny intervenor status to a competitor with an economic interest in a proceeding (*Cablevision v. Department of Telecommunications and Energy*, 428 Mass. 436 (1998)(“*Cablevision*”)), WMECo attempts to extrapolate the holdings in these cases to support the denial of petitions to intervene by suppliers who compete in the very industry which is the subject of this proceeding and who will compete against the very rates which will be established in this case.

Unlike the petitioners seeking to intervene in *Tofias* and *Cablevision*, both Centrica and Dominion seek to intervene here because they are (or seek to be) competitors in the Massachusetts retail electricity market. Of course, there is no logical basis for excluding electricity suppliers from a proceeding in which the electricity “price to beat” will be established. The Supreme Judicial Court in *Cablevision* recognized the profound difference between intervention by competitors in another industry and intervention by competitors in the industry that is the subject of the proceeding:

The department has not considered inter-industry competition to be a relevant factor in evaluating the public interest under G.L. c. 164, § 96. *In various circumstances, intra-industry competitors have had standing to challenge agency action that allegedly caused them harm.* See *Massachusetts Ass’n of Indep. Ins. Agents & Brokers, Inc. v. Commissioner of Ins.*, 373 Mass. 290, 295-296, 367 N.E.2d 796 (1977); *Everett Town Taxi, Inc. v. Aldermen of Everett*, 366 Mass. 534, 538-539, 320 N.E.2d 896 (1974); *South Shore Nat’l Bank v. Board of Bank Incorporation*, 351 Mass. 363, 367-368, 220 N.E.2d

899 (1966); *A.B. & C. Motor Transp. Co. v. Department of Pub. Utils.*, 327 Mass. 550, 551, 100 N.E.2d 560 (1951). *There is, however, no parallel inter-industry authority that supports standing.* Our cases have recognized that the department's task, assigned by the Legislature, is the "protection of ratepayers." See *Commonwealth Elec. Co. v. Department of Pub. Utils.*, 397 Mass. 361, 369, 491 N.E.2d 1035 (1986), cert. denied, 481 U.S. 1036, 107 S.Ct. 1971, 95 L.Ed.2d 812 (1987), and cases cited.

*Cablevision* at 438 (emphasis added).

WMECo attempts here to create a closed adjudicatory circle where only ratepayers can question a distribution company's data or examine its calculations. In WMECo's perfect world, competitive suppliers could be no more than helpless bystanders, unable to test or question the very rates and charges which could "make or break" them. Such a vision would be untenable with respect to any proceeding in which electricity rates are to be set, but it is particularly inappropriate in the case of a default service rate proceeding which grows out of an earlier proceeding, D.T.E. 02-80, in which the Department took steps to allow for more meaningful competition in the retail electricity market.

Certainly, the Department has not opted to exclude intra-industry competitors from gas or telecommunications rate proceedings. In proceedings regarding gas rates, the Department has granted intervenor status to gas marketers. See Bay State Gas Company, D.T.E. 01-81 (December 4, 2002); Bay State Gas Company, D.P.U. 95-104 (1995); Fall River Gas Company, D.P.U. 96-60 (1996); Boston Gas Company, D.P.U. 96-50 (Phase I) (1996); Commonwealth Gas Company, DPU 95-102 (December 22, 1995). Similarly, competitive local exchange companies have been allowed to intervene in proceedings regarding Verizon customer rates. See New England Telephone and Telegraph d/b/a NYNEX, D.P.U. 96-68 (1997); New England Telephone and Telegraph d/b/a NYNEX, D.P.U. 94-50 (1995).

In the end, any decision to deny intervention to competitive suppliers in a proceeding where the electricity “price to beat” will be established would be both extraordinary and unnecessary. First, neither case law nor Department precedent supports the denial of intervention to a potential intervenor that is substantially and specifically affected by the rates being set in the industry in which the potential intervenor operates. Second, it would be particularly appropriate for the Department to use its discretion to deny intervention in an intra-industry context in a case which springs from a prior proceeding which was predicated on the Department’s interest in allowing for more meaningful competition in the restructured electricity industry.

**IV. Statements Made by Centrica and Dominion in Joint Written Comments Filed in this Proceeding Have No Bearing on the Issue of Intervention.**

While it may be the case that the joint written comments submitted by Centrica and Dominion in this proceeding call for the Department to take a more expansive view of this proceeding, statements made by Centrica and Dominion in those joint comments have no bearing on whether Centrica and Dominion are substantially and specifically affected by this proceeding.

In its February 17, 2004 Notice in this proceeding, the Department established one track for petitions to intervene and a separate track for written comments. Clearly, the Department understands the difference between petitions to intervene -- through which entities are required to demonstrate that they are substantially and specifically affected by the proceeding -- and written comments -- through which entities can provide the Department with views on a broad range of issues associated with the proceeding. Here, Centrica and Dominion have availed themselves of the opportunity to provide written comments on how this particular proceeding might be reformulated to address more effectively a number of issues directly related to matters at issue in this proceeding. Despite WMECo’s concerns, the suggestions put forth by Centrica and

Dominion in joint written comments in this proceeding have no bearing on whether Centrica and Dominion are substantially and specifically affected by this proceeding. Moreover, the filing of these joint written comments surely do not lead to the conclusions that Centrica and Dominion do not want to participate under the Department's rules or somehow will interfere with the orderly adjudication of this case. *See* WMECo Opposition at 7.

In the end, there are a number of options available to the Department with respect to these joint written comments: the Department can adopt all or some of suggestions made by Centrica and Dominion, ignore them entirely, or apply them in some other context outside of this proceeding. The Department, however, may not choose the punitive option suggested by WMECo and deny intervention to Centrica and Dominion. Where Centrica and Dominion are both substantially and specifically affected by this proceeding, intervention is warranted.

### **CONCLUSION**

For the foregoing reasons, Centrica and Dominion respectfully request that the Department grant their petitions to intervene and accord them full party status in this case.

Respectfully submitted,

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